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THE FOLLOWING MESSAGE SENT TO MANILA DTG P 070027Z FEB 76
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TAGS: MARR, RP

SUBJECT: MILITARY BASE NEGOTIATIONS

REF: MANILA 1435

1. WORKING GROUP COMMENDS EMBASSY FOR PRODUCING USEFUL
FIRST DRAFT OF NEW BASES AGREEMENT. EXTENSIVE REVIEW BY
CONCERNED AGENCIES UNDERWAY. INITIAL QUESTIONS AND COM-
MENTS REGARDING EMBASSY DRAFT FOLLOW:

2. STRATEGY-TACTICS: BASIC QUESTION RAISED BY WORKING
GROUP IS WHETHER EMBASSY INTENDS ITS DRAFT AS INITIAL
NEGOTIATING POSITION OR AS FINAL FALLBACK POSITION. WORKING
GROUP IS CONCERNED THAT PHILIPPINE NEGOTIATOR, FOR TACTI-

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CAL REASONS WOULD NOT BE ABLE TO ACCEPT IN ITS ENTIRETY
THE INITIAL U.S. OFFER, WHATEVER ITS CONTENTS, WITHOUT

MAKING COUNTER-PROPOSALS AND ATTEMPTING TO UP THE ANTE. WE ASSUME THAT SUCCESSFUL CONCLUSION OF NEGOTIATIONS WILL REQUIRE U.S. SIDE TO MAKE ADDITIONAL CONCESSIONS TO PHILIPPINE NEGOTIATING DEMANDS. WE DOUBT, THEREFORE, THE TACTICAL WISDOM OF LAYING ALL OF OUR CARDS ON TABLE AT OUTSET.

3. WORKING GROUP CONTINUES TO BELIEVE IT DESIRABLE TO ASCERTAIN IN AS MUCH DETAIL AS POSSIBLE THE PHILIPPINE DESIRES AND REQUIREMENTS. THE LANGUAGE OF THE EMBASSY DRAFT APPEARS TO REFLECT THE INFORMAL PHILIPPINE STAFF STUDY GIVEN AMBASSADOR SULLIVAN PRIOR TO HIS APRIL 1974 VISIT TO U.S. IT WOULD BE HELPFUL TO KNOW TO WHAT EXTENT THIS POSITION HAS BEEN SUBSEQUENTLY MODIFIED. DOES EMBASSY CONTINUE TO CONSIDER IT UNDESIRABLE TO APPROACH GOP IN ADVANCE OF ROMULO VISIT FOR EITHER FORMAL OR INFORMAL STATEMENT OF ITS INTERESTS IN NEGOTIATIONS? IF SO, COULD EMBASSY LIST WHAT IT CONSIDERS TO BE GOP OBJECTIVES? ARE CONCEPTS RAISED SINCE 1974 SUCH AS COMMERCIALIZATION AND AUTOMATICITY NO LONGER OPERATIVE?

4. ARTICLE I: PARA 3 ANNEX C. (SECURITY). WE FIND NO PROVISION ANYWHERE IN THE DRAFT PROVIDING FOR AREAS WITHIN THE BASES FOR EXCLUSIVE USE BY THE U.S. ARMED FORCES OR FOR U.S. SECURITY FOR SUCH AREAS. WHY DOES ANNEX C OMIT LANGUAGE OF CURRENT BASE AGREEMENT PROVIDING FOR PHILIPPINE SECURITY LEGISLATION? FINAL SENTENCE OF PARA I, ANNEX C, STIPULATES THAT U.S. FORCES MAY ASSIST IN MAINTENANCE OF SECURITY "BY MUTUAL AGREEMENT". WHAT HAPPENS IF GOP DOES NOT AGREE? IF IT IS INTENDED THAT THE MUTUAL AGREEMENT IS TO BE REACHED THROUGH RATIFICATION OF THIS TEXT, THEN THE PHRASE "BY MUTUAL AGREEMENT" IS REDUNDANT AND SUBJECT TO MISINTERPRETATION AND SHOULD BE DELETED.

5. ARTICLE I: PARA 4 AND ANNEX D; ARTICLE IV: PROCEDURAL ANNEX VII (LABOR). WE HAVE GREAT DIFFICULTY WITH APPROACH TOWARD LABOR TAKEN IN THIS DRAFT. ON THE ONE HAND, PARA 4 AND ANNEX D OF ARTICLE I APPEAR TO GIVE GOP COMPLETE AUTHORITY OVER EMPLOYMENT OF PHILIPPINE CITIZENS

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ON BASES; ON THE OTHER HAND, PROCEDURAL ANNEX VII IS APPARENTLY INTENDED TO RETAIN MOST OF THE CRUCIAL AUTHORITY IN THE HANDS OF THE U.S. ARMED FORCES. WE DO NOT SEE HOW LANGUAGE OF ARTICLE I CAN BE RECONCILED WITH THE PROPOSED PROVISIONS OF THE PROCEDURAL ANNEX. DOES THE EMBASSY PLAN TO HAVE THE PROCEDURAL ANNEX DRAFTED BY THE TIME NEGOTIATIONS BEGIN? IN PARA IV OF ANNEX D (BASE MAINTENANCE), TO WHAT AREAS WOULD THE FOLLOWING LANGUAGE APPLY: "NOT DESIGNATED FOR THE PRIMARY USE OF EITHER PHILIPPINE OR UNITED STATES FORCES OR OTHERWISE PROVIDED

FOR IN THIS AGREEMENT"?

6. ARTICLE I: ANNEX A. PARA I (COMMAND)

A. SUBPARA A. EVERY COUNTRY WITH WHICH WE HAVE MUTUAL DEFENSE TREATY HAS AGREED TO FLY U.S. FLAG OUTDOORS. SPANISH EXAMPLE IS THEREFORE NOT RELEVANT. DOES EMBASSY VIEW PHILIPPINE POSITION ON FLAGS AS NON-NEGOTIABLE?

B. SUBPARA B. TEXT STATES PHILIPPINE COMMANDER WOULD HAVE RESPONSIBILITY FOR JURISDICTION ON THE BASE IN ACCORDANCE WITH PROVISIONS OF THIS AGREEMENT. BUT IN PROCEDURAL ANNEX II (CRIMINAL JURISDICTION) WE FIND NO REFERENCE TO PHILIPPINE COMMANDER OR HIS RESPONSIBILITIES. PLEASE INDICATE WHICH PROVISIONS SUBPARA B REFERS TO. SECOND SENTENCE REFERS TO UNITED STATES COMMANDER WITHOUT OTHERWISE IDENTIFYING HIM OR INDICATING RELATIONSHIP BETWEEN HIM AND PHILIPPINE COMMANDER. BELIEVE THIS RELATIONSHIP SHOULD BE SPELLED OUT IN MORE DETAIL.

C. SUBPARA C. TEXT WOULD PERMIT U.S. AND PHILIPPINE COMMANDERS AT EACH INSTALLATION TO ESTABLISH THEIR OWN REGULATIONS, SUBJECT TO GENERAL GUIDELINES OF MUTUAL DEFENSE BOARD AND REVIEW BY THAT BOARD. IS TERM "REVIEW" INTENDED TO IMPLY THAT BOARD WILL HAVE AUTHORITY TO COUNTERMAND LOCAL COMMANDERS' REGULATIONS?

7. ARTICLE I: ANNEX A. PARA II (ADMINISTRATION)

A. SUBPARA A. PLEASE EXPLAIN INTENT OF THIS SUBPARA. WHICH PHILIPPINE COMMANDER IS BEING REFERRED TO? ARE THE
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PHILIPPINE MILITARY PERSONNEL TO BE TRAINED FOR GRADUAL REPLACEMENT OF U.S. ARMED FORCES DURING LIFE OF AGREEMENT OR IS THIS TRAINING TO BE PROVIDED IN ORDER TO ENABLE THEM TO REPLACE U.S. FORCES FOLLOWING TERMINATION OF AGREEMENT AND DEPARTURE OF U.S. FORCES? IF LATTER IS THE CASE, WHY NOT SAY SO?

B. SUBPARA B. FINAL SENTENCE PROVIDES FORMULA FOR PROPORTIONAL SHARING OF COSTS OF FACILITIES SHARED BY PHILIPPINE AND U.S. FORCES. PHRASE "USED PRIMARILY BY" IN FIRST TWO SENTENCES IS IMPRECISE AND APPEARS REDUNDANT AND CONTRADICTORY TO PROPORTIONAL FORMULA. WOULD IT NOT BE PREFERABLE TO SAY "USED EXCLUSIVELY BY" SINCE JOINT USE IS COVERED BY FINAL SENTENCE?

8. ARTICLE I: ANNEX B. PARA II. BELIEVE MORE APPROPRIATE LANGUAGE MIGHT BE: "UPON ENTRY INTO FORCE OF THIS AGREEMENT, THE U.S. GOVERNMENT RELINQUISHES" AND "THE

U.S. GOVERNMENT MAY CONTINUE TO USE, FOR THE DURATION OF THIS AGREEMENT, FOR MILITARY AND RELATED PURPOSES".

A. SUBPARA A. BELIEVEFOR CONSISTENCY "INSTALLATION" SHOULD BE USED HERE INSTEAD OF "FACILITY".

B. SUBPARA D SUBSUBPARA 3). THIS APPEARS TO BE THE ONLY INSTALLATION FOR WHICH A "HOST-TENANT" ARRANGEMENT IS SUGGESTED. BELIEVE THIS LANGUAGE WOULD IMMEDIATELY RAISE QUESTION OF WHY SAME ARRANGEMENT SHOULD NOT APPLY TO ALL INSTALLATIONS. LANGUAGE ALSO IMPLIES PAYMENT OF RENT.

C. SUBPARA E (JOHN HAY AIR BASE). BELIEVE REFERENCE TO AREA UTILIZED BY EMBASSY IN SUBSUBPARA 3) SHOULD BE SEPARATED OUT AS NEW SUBSUBPARA 3), WITH REMAINDER OF PRE-SENT SUBSUBPARA 3) BECOMING NEW SUBSUBPARA 4), FIRST SENTENCE OF WHICH WOULD READ: "4) THE GOVERNMENT OF THE PHILIPPINES AGREES TO ALLOW UNHINDERED ACCESS TO THE AREAS DESCRIBED IN (1), (2), AND (3) ABOVE."

9. ANNEX B. PARA IX, SUBPARA B-3. WE QUESTION DELETION OF THE PARENTHETICAL PHRASE: "(INCLUDING THE RIGHT TO PROHIBIT)" FROM THE LANGUAGE OF THE CURRENT MBA.

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10. ARTICLE II (2) AND ARTICLE I ANNEX D. IS REFERENCE TO FINANCIAL COMPENSATION INTENDED TO BE BALANCED PAYMENT FOR SPECIFIC SERVICES RENDERED OR DOES EMBASSY SEE THESE CLAUSES, WHICH ARE SOMEWHAT OPEN-ENDED AS DRAFTED, AS PROVIDING FOR SUBSTANTIAL ADDITIONAL COMPENSATION TO GOP FOR BASE USAGE?

11. MORE QUESTIONS AND COMMENTS WILL FOLLOW AS STUDY OF DRAFT CONTINUES.

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